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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,787	12/20/2001	Jeffrey E. Fish	KCX-398 (15417)	9570

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,787

Applicant(s)

FISH ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The Amendment filed on November 23, 2004 has been entered. Claims 1 – 39 are pending.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 – 10, 12 – 20, 22 – 35, and 37 – 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. (4,892,535) in view of Tanzer et al. (5,411,497) for the reasons of record.

4. Claims 1 – 10, 12 – 20, and 22 – 24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. (5,938,650) in view of Tanzer et al. for the reasons of record.

5. Claims 25 – 34 and 36 – 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. and Tanzer et al. as applied above, and further in view of Bjornberg et al. for the reasons of record.

6. Claims 11, 21, and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. and Tanzer et al. as applied to claims 1, 15, and 25 above, and in further view of Taylor et al. (5,332,613) for the reasons of record.

7. Claims 11 and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. and Tanzer et al. as applied to claims 1 and 15 above, and in further view of Taylor et al. for the reasons of record.

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8. Claim 35 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al., Tanzer et al., and Bjornberg et al. as applied to claim 25 above, and in further view of Taylor et al. for the reasons of record.

Response to Arguments

9. Applicant's arguments filed November 23, 2004 have been fully considered but they are not persuasive. The applicant argues that Bjornberg et al. fails to teach that both substrates are textured and possess elevations and depressions (response, page 8 – 10). As set forth in the previous Office Action, it is the examiner's position that the base layer taught by Bjornberg et al. would inherently bulge out to some degree creating elevations and depressions in the base layer because the base material is a flexible material and the weight of the particles in the pockets would prevent the base layer from remaining completely flat. The applicant also argues that one of ordinary skill in the art would interpret the term "textured" as requiring a material which would sustain the textured form permanently. However, the applicant did not define textured in the specification this and there is nothing in the commonly understood definition of textured which requires texturing to be a permanent change. If something contains a crinkled, wavy or generally has an unsmooth surface, then the material is textured in that configuration, even if the texture could be removed from the surface. The applicant has provided no evidence that texturing requires a permanent change in the substrates structure. Further, the disclosure provides no specific dimensions with regards to the difference in height between the elevations and depressions to define those terms as requiring a change in height which is greater than what would be created when the base layer in Bjornberg et al. bulges out due to the weight and pressure of the particles. Therefore, the rejection is maintained since the base layer will be textured to some degree and will not remain completely flat after being produced.

Further, it is noted that the process to create the claimed invention is similar to the process taught by Bjornberg et al. In both the claimed process and Bjornberg et al, a vacuum is applied to one substrate to form the pockets, then the particles are deposited in the pockets, and finally the second substrate is placed on the first substrate and bonded together at the regions where there are no particles. The applicant does not disclose any special processing is preformed on the second substrate to create the textured surface or the elevations and depressions in the second surface. And the figures show that during processing one of the substrates is flat, but both substrates are textured in the final product. Therefore, Bjornberg et al. is produced by similar methods as the applicant and would therefore, have a final product where both substrates are textured to some degree. Thus, the rejection is maintained.

Finally, the applicant argues that Bjornberg et al. and Tanzer et al. cannot be combined to create a laminate having substrate layer which is liquid impermeable and gas permeable (response, page 10 – 11). The applicant argues that Tanzer et al. is teaching that the backsheet for the entire diaper is a completely flat layer. First, it is noted that both Tanzer et al. and Bjornberg et al. are drawn to absorbent articles. And Tanzer et al. discloses a specific teaching stating that the liquid impermeable layer could also be made from a layer which is liquid impermeable and gas permeable since the would allow water vapor to escape from the composite structure. Thus, it would have been obvious to one of ordinary skill in the art to substitute breathable, liquid impermeable layers for liquid impermeable layers in other absorbent articles to allow water vapor to escape from the composite. Tanzer et al. discloses that it is advantageous to allow moisture vapor to escape from the base of the absorbent structure. Hence, this teaching correlates to the backsheet of other absorbent structures regardless of the number of layers present in the overall absorbent structure. And when the breathable layer is substituted for the

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backsheet taught by Bjornberg et al. it would also bulge out to some degree due to the pocket structure and weight of the particles. Hence, the rejection is maintained.

10. The applicant argues that Baer et al. is improperly combined with Tanzer et al. (response, page 12). As set forth above, Tanzer et al. discloses a specific teaching stating that the liquid impermeable layer could also be made from a layer which is liquid impermeable and gas permeable since the would allow water vapor to escape from the composite structure. Hence, this teaching correlates to the backsheet of other absorbent structures regardless of the number of layers present in the overall absorbent structure. Therefore, one of ordinary skill in the art would have been motivated to use the breathable, liquid impermeable layer in Baer et al. to allow moisture to pass through the base layer and the absorbent structure to dry and be more comfortable.

Further, the applicant argues that it would not have been obvious to use vacuum suction to form the pocket composite taught by Baer et al. Both Baer et al. and Bjornberg et al. disclose similar techniques such as depositing the particles and bonding the layers together. However, Baer et al. doesn't detail how the positioning of the particles is controlled to prevent the particles from dispersing over the entire substrate. Thus one of ordinary skill in the would use other known methods for controlling the location of the particles, such as the method taught by Bjornberg et al., which is using vacuum suction. Therefore, the rejection is maintained.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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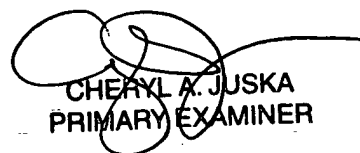
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
February 10, 2005



CHERYL A. JUSKA
PRIMARY EXAMINER